

1960

## c 245 Mortgages Act

Ontario

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## CHAPTER 245

## The Mortgages Act

## 1. In this Act,

Interpretation

- (a) "conveyance" includes assignment, appointment, lease, settlement and other assurance and covenant to surrender made by deed on a sale, mortgage, demise or settlement of any property or on any other dealing with or for any property; and "convey" has a corresponding meaning;
- (b) "encumbrance" includes a mortgage in fee or for a less estate, a trust for securing money, a lien, and a charge of a portion, annuity or other capital or annual sum; and "encumbrancer" has a corresponding meaning, and includes every person entitled to the benefit of an encumbrance, or to require payment or discharge thereof;
- (c) "land" includes tenements and hereditaments, corporeal or incorporeal, houses and other buildings, and also an undivided share in land;
- (d) "mortgage" includes any charge on any property for securing money or money's worth; "mortgage money" means money or money's worth secured by a mortgage; "mortgagor" includes any person deriving title under the original mortgagor or entitled to redeem a mortgage, according to his estate, interest or right in the mortgaged property; and "mortgagee" includes any person deriving title under the original mortgagee. R.S.O. 1950, c. 239, s. 1.

## PART I

## RIGHTS AND OBLIGATIONS OF MORTGAGORS AND MORTGAGEES

2.—(1) Notwithstanding any stipulation to the contrary where a mortgagor is entitled to redeem he may require the mortgagee, instead of giving a certificate of payment or reconveying and on the terms on which he would be bound to reconvey, to assign the mortgage debt and convey the mortgaged property to any third person as the mortgagor directs, and the mortgagee is bound to assign and convey accordingly.

Obligation  
on mortgagee  
to transfer  
instead of  
reconveying

Idem

(2) The right of the mortgagor to require an assignment belongs to and is capable of being enforced by each encumbrancer or by the mortgagor, notwithstanding any intermediate encumbrance; but a requisition of an encumbrancer prevails over that of the mortgagor, and as between encumbrancers a requisition of a prior encumbrancer prevails over that of a subsequent encumbrancer.

Exception

(3) This section does not apply if the mortgagee is or has been in possession. R.S.O. 1950, c. 239, s. 2.

Right of mortgagor to inspect title deeds

**3.** Notwithstanding any stipulation to the contrary a mortgagor, as long as his right to redeem subsists, is entitled, at reasonable times, on his request, and at his own cost and on payment of the mortgagee's costs and expenses in that behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee. R.S.O. 1950, c. 239, s. 3.

Action for possession of land by mortgagor

**4.** A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land, as to which no notice of his intention to take possession or to enter into receipt of the rents and profits thereof has been given by the mortgagee, may sue for such possession, or sue or distrain for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person, and in that case he may sue or distrain jointly with such other person. R.S.O. 1950, c. 239, s. 4.

Application of insurance money

**5.—(1)** All money payable to a mortgagor on an insurance of the mortgaged property, including effects, whether affixed to the freehold or not, being or forming part thereof, shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

Idem

(2) Without prejudice to any obligation to the contrary imposed by law or by special contract, a mortgagee may require that all money received on an insurance of the mortgaged property be applied in or towards the discharge of the money due under his mortgage. R.S.O. 1950, c. 239, s. 5.

Covenants to be implied:

**6.** There shall, in the several cases mentioned in this section, be deemed to be included, and there shall in those several cases be implied, covenants to the effect stated in this section, by the person or by each person who conveys, as far as

regards the subject-matter or share thereof expressed to be conveyed by him with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say,

- (a) in a conveyance by way of mortgage, the following <sup>on mortgage by beneficial owner</sup> covenants by the person who conveys, and is expressed to convey as beneficial owner, namely,

- (i) for payment of the mortgage money and interest, and observance in other respects of the proviso in the mortgage,
- (ii) for good title,
- (iii) for right to convey,
- (iv) that, on default, the mortgagee shall have quiet possession of the land, free from all encumbrances,
- (v) that the mortgagor will execute such further assurances of the said lands as may be requisite, and
- (vi) that the mortgagor has done no act to encumber the land mortgaged,

according to the forms of covenants for such purposes set forth in Schedule B to *The Short Forms of Mortgages Act*, subject to the provisions of that Act; <sup>R.S.O. 1960, c. 374</sup>

- (b) in a conveyance by way of mortgage of leasehold <sup>on mortgage of leaseholds, by beneficial owner</sup> property, the following further covenants by the person who conveys and is expressed to convey, as beneficial owner, namely,

- (i) that the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid and effectual lease or grant of the land conveyed, and is in full force, unforfeited, and unsurrendered, and in no wise become void or voidable, and that all the rents reserved by, and all the covenants, conditions and agreements contained in the lease or grant and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, have been paid, observed and performed up to the time of conveyance, and



- (ii) that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains on the security of the conveyance, pay, observe and perform, or cause to be paid, observed and performed, all the rents reserved by, and all the covenants, conditions and agreements contained in the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, and will keep the person to whom the conveyance is made and those deriving title under him indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent, or the non-observance or non-performance of such covenants, conditions and agreements, or any of them. R.S.O. 1950, c. 239, s. 6.

Implied covenants in mortgages are joint and several

7. In a mortgage, where more persons than one are expressed to convey as mortgagors, or to join as covenantors, the implied covenants on their part shall be deemed to be joint and several covenants by them, and where there are more mortgagees than one the implied covenant with them shall be deemed to be a covenant with them jointly unless the amount is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him. R.S.O. 1950, c. 239, s. 7.

Release of equity of redemption without merger of debt

8.—(1) A mortgagee of freehold or leasehold property may take and receive from the mortgagor a release of the equity of redemption in the property, or may purchase the same under any judgment or decree or execution without thereby merging the mortgage debt as against any subsequent mortgagee or person having a charge on the same property.

Position of subsequent mortgagee

(2) Where a prior mortgagee so acquires the equity of redemption of the mortgagor no subsequent mortgagee is entitled to foreclose or sell the property without redeeming or selling, subject to the rights of such prior mortgagee, in the same manner as if such prior mortgagee had not acquired the equity of redemption.

Priority under registry

(3) This section does not affect any priority or claim any mortgagee may have under the registry laws. R.S.O. 1950, c. 239, s. 8.

9. Where a person entitled to any freehold land by way of mortgage has died, and his executor or administrator has become entitled to the money secured by the mortgage, or has assented to a bequest thereof, or has assigned the mortgage debt, such executor or administrator, if the mortgage money was paid to the testator or intestate in his lifetime, or on payment of the principal money and interest due on the mortgage, or on receipt of the consideration money for the assignment, may convey, assign, release or discharge the mortgage debt and the mortgagee's estate in the land, and such executor or administrator has the same power as to any part of the land on payment of some part of the mortgage debt, or on any arrangement for exonerating the whole or any part of the mortgaged land, without payment of money, and such conveyance, assignment, release or discharge is as effectual as if the same had been made by the persons having the mortgagee's estate. R.S.O. 1950, c. 239, s. 9.

Powers of  
executors of  
mortgagee

10.—(1) In this section, "court" means the Supreme Court or the county or district court of the county or district in which the land or any part thereof is situate. 1952, c. 61, s. 1 (1).

Interpre-  
tation

(2) The payment in good faith of any money to and the receipt thereof by the survivor or survivors of two or more mortgagees, or the executors or administrators of such survivor, or their or his assigns, effectually discharges the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the security.

Effect of  
receipts of  
surviving  
mortgagee,  
etc.

(3) When a mortgagor or any person entitled to pay off a mortgage desires to do so and the mortgagee, or one of several mortgagees, cannot be found or when a sole mortgagee or the last surviving mortgagee is dead and no probate of his will has been granted or letters of administration issued, or where from any other cause a proper discharge cannot be obtained, or cannot be obtained without undue delay, the court may permit payment into court of the amount due upon the mortgage and may make an order discharging the mortgage.

Where  
mortgagee  
cannot be  
found

(4) The money paid into court shall be paid out of court with any accrued interest to the mortgagee or mortgagees or to the executor or administrator of the mortgagee or as the court by order for payment into court or any subsequent order may direct.

Payment  
out of  
money paid  
into court

(5) The court may require notice to be given by advertisement or as may be deemed proper to the mortgagee or those claiming under him either before or after making the order.

Notice to  
mortgagee

When  
amount  
offered  
questioned

(6) When the amount admitted to be due upon the mortgage appears to be open to question the court may as a condition of making the order require payment into court of a sum in excess of the amount admitted to be due and in such case the additional sum is subject to the further order of the court.

Provision for  
subsequent  
interest and  
costs

(7) The court may require payment into court of an additional sum to answer any claim by the mortgagee for subsequent interest and costs.

Death of  
mortgagee,  
order for  
discharge

(8) When a mortgagee has died and all money due upon the mortgage was paid to him in his lifetime or has been paid to a person entitled to receive the same after his death or where in any other case it appears that all money due upon the mortgage has been paid and for any reason a discharge or reconveyance cannot be obtained without undue delay and expense the court may make an order discharging the mortgage.

Registration  
of order  
discharging

(9) Upon the registration of an order discharging a mortgage it has the same effect as the registration of a certificate of discharge signed by the mortgagee would have under *The Registry Act*. R.S.O. 1950, c. 239, s. 10 (2-9).

R.S.O. 1960,  
c. 348

Appeal

(10) An appeal lies to the Court of Appeal from any order made under this section. 1952, c. 61, s. 1 (2).

Defence  
of purchase  
for value  
without  
notice

**11.** The purchaser in good faith of a mortgage may, to the extent of the mortgage, and except as against the mortgagor, set up the defence of purchase for value without notice in the same manner as a purchaser of the mortgaged property might do. R.S.O. 1950, c. 239, s. 11.

Exemption  
from  
liability to  
distress

**12.** Notwithstanding any stipulation in the mortgage to the contrary, the right of a mortgagee to distrain for interest in arrear upon a mortgage is limited to the goods and chattels of the mortgagor, and to such of them as are not exempt from seizure under execution. R.S.O. 1950, c. 239, s. 12.

Limitation  
upon right  
to distrain

**13.—(1)** As against creditors of a mortgagor, or person in possession of mortgaged premises under a mortgagor, the right, if any, to distrain upon the mortgaged premises for arrears of interest or for rent, in the nature of or in lieu of interest under the provisions of any mortgage is restricted to one year's arrears of such interest or rent.

When  
restriction  
to apply

(2) This restriction does not apply unless some one of such creditors is an execution creditor, or unless there is an assignee for the general benefit of such creditors appointed before lawful sale of the goods and chattels distrained, nor



unless the officer executing such writ of execution or such assignee, by notice in writing to be given to the person distraining or his attorney, bailiff, or agent before such lawful sale, claims the benefit of this restriction.

(3) When such notice is given, the distrainer shall relinquish to the officer or assignee the goods and chattels so distrained, upon receiving one year's arrears of such interest or rent and his reasonable costs of distress, or if such arrears and costs are not paid or tendered he shall sell only so much of the goods and chattels distrained as is necessary to satisfy one year's arrears of such interest or rent and the reasonable costs of distress and sale, and shall thereupon relinquish any residue of them, and pay any residue of money, proceeds thereof so distrained, to such officer or assignee.

Duty of distrainer when restriction applies

(4) An officer executing an execution, or an assignee who pays any money to relieve goods and chattels from distress under this section, is entitled to reimburse himself therefor out of the proceeds of the sale thereof. R.S.O. 1950, c. 239, s. 13.

Reimbursement of officer or assignee

**14.** Goods and chattels distrained by a mortgagee shall not be sold except after such public notice as is required to be given by a landlord who sells goods and chattels distrained for rent. R.S.O. 1950, c. 239, s. 14.

Notice of sale

**15.—(1)** Notwithstanding any agreement to the contrary, where default has been made in the payment of any principal money secured by a mortgage of freehold or leasehold property, the mortgagor or person entitled to make such payment may at any time, upon payment of three months interest on the principal money so in arrear, pay the same, or he may give the mortgagee at least three months notice, in writing, of his intention to make such payment at a time named in the notice, and in the event of his making such payment on the day so named he is entitled to make the same without any further payment of interest except to the date of payment.

Payment of principal upon default

(2) If the mortgagor or person entitled to make such payment fails to make the same at the time mentioned in the notice, he is thereafter entitled to make such payment only on paying the principal money so in arrear and interest thereon to the date of payment together with three months interest in advance.

Exception

(3) Nothing in this section affects or limits the right of the mortgagee to recover by action or otherwise the principal money so in arrear after default has been made. R.S.O. 1950, c. 239, s. 15.

Saving



Right to  
redeem  
after 5 years

**16.**—(1) Where any principal money or interest secured by a mortgage of freehold or leasehold property is not, under the terms of the mortgage, payable till a time more than five years after the date of the mortgage, then, if at any time after the expiration of such five years any person liable to pay or entitled to redeem tenders or pays to the person entitled to receive the money the amount due for principal money and interest to the time of such tender or payment, together with three months further interest in lieu of notice, no further interest is chargeable, payable or recoverable at any time thereafter on the principal money or interest due under the mortgage.

Exceptions

(2) This section does not apply to any mortgage given by a joint stock company or other corporation nor to any debenture issued by any such company or corporation for the payment of which security has been given on freehold or leasehold property. R.S.O. 1950, c. 239, s. 16.

Paying off  
mortgage  
when pro-  
vision made  
for a lower  
rate for  
punctual  
payment

**17.**—(1) Where provision is made in a mortgage that if interest is paid promptly it will be accepted at a lower rate than that provided in the mortgage, and interest at the lower rate has been paid according to such condition up to the time when all the principal money has become payable, any person liable to pay or entitled to redeem is entitled to pay the principal money and interest on the same at the lower rate at any time after the time for payment of the principal money on giving three months notice of his intention to make such payment or on paying three months interest at such lower rate in lieu of notice.

Mortgagor  
failing to pay  
according to  
notice

(2) If the mortgagor or person entitled to make such payment fails to make the same at the time mentioned in the notice, he is thereafter entitled to make such payment only on paying the principal and interest at the lower rate to the date of payment, together with three months interest in advance. R.S.O. 1950, c. 239, s. 17.

Interpre-  
tation

**18.**—(1) In this section, "original mortgagor" means any person who by virtue of privity of contract with the mortgagee is personally liable to the mortgagee to pay the whole or any part of the moneys secured by the mortgage.

Right of  
mortgagee  
to recover  
personal  
judgment

(2) Notwithstanding any stipulation to the contrary in a mortgage, where a mortgagor has conveyed and transferred the equity of redemption to a grantee under such circumstances that the grantee is by express covenant or otherwise obligated to indemnify the mortgagor with respect to the mortgage, the mortgagee has the right to recover from the grantee the amount of the mortgage debt in respect of which

the grantee is obligated to indemnify the mortgagor; provided that the right of the mortgagee to recover the amount of the mortgage debt under this section from the grantee of the equity of redemption shall as against such grantee terminate on the registration of a grant or transfer of the equity of redemption by such grantee to another person unless prior to such registration an action has been commenced to enforce the right of the mortgagee.

(3) Where a mortgagee has the right to recover the whole or any part of moneys secured by a mortgage from an original mortgagor and also has a right by virtue of this section to recover from a grantee of the equity of redemption from a mortgagor, if the mortgagee recovers judgment for the amount of the mortgage debt against the original mortgagor, the mortgagee thereupon forever ceases to have a right to recover under this section from a grantee, and if the mortgagee recovers judgment under this section against a grantee he thereupon forever ceases to have a right to recover from the original mortgagor; provided that where there is more than one original mortgagor this section does not affect the right of a mortgagee after the recovery of judgment against one original mortgagor to recover judgment against the other original mortgagor or mortgagors. R.S.O. 1950, c. 239, s. 18.

Limit of  
right of  
action

**19.—**(1) In this section, "building mortgage" means any mortgage made for the purpose of financing the construction of a building.

Interpre-  
tation

(2) Where, in any building mortgage made on or after the 1st day of July, 1942, it is expressly stated that it is a building mortgage made pursuant to this section, no action may be brought by the mortgagee after the expiration of one year from the date of the maturity of the mortgage whereby to recover payment from the person who executed the mortgage, of the whole or any part of the moneys therein secured, if such person has made a *bona fide* sale of the property and has conveyed and transferred the equity of redemption to a grantee under such circumstances that the grantee is by express covenant or otherwise obligated to indemnify such person with respect to the mortgage. R.S.O. 1950, c. 239, s. 19.

When no  
action may  
be brought

**20.—**(1) Notwithstanding any agreement to the contrary, where default has occurred in making any payment of principal or interest due under a mortgage or in the observance of any covenant in a mortgage and under the terms of the mortgage, by reason of such default, the whole principal and interest secured thereby has become due and payable,

Relief for  
mortgagors  
in default  
in payment  
of principal  
or interest,  
etc.

- (a) at any time before sale under the mortgage or before the commencement of an action for the enforcement of the rights of the mortgagee or of any person claiming through or under him, the mortgagor may perform such covenant or pay the amount of moneys due under the mortgage, exclusive of the money not payable by reason merely of lapse of time, and pay any expenses necessarily incurred by the mortgagee, and thereupon he is relieved from the consequences of such default; or
- (b) in an action for enforcement of the rights of the mortgagee or of any person claiming through or under him, upon performance of such covenant or upon payment of the moneys due under the mortgage, exclusive of the money not payable by reason merely of lapse of time, and upon payment of the costs of the action, the mortgagor may apply to the court for relief, and
  - (i) if judgment has not been recovered the court shall dismiss the action, or
  - (ii) if judgment has been recovered but no sale or recovery of possession of the land or final foreclosure of the equity of redemption has taken place the court may stay proceedings in the action. 1953, c. 66, s. 1 (1), *part*.

Stay of proceedings on application of subsequent encumbrancer

(2) Notwithstanding subclause ii of clause *b* of subsection 1, where judgment has been recovered and recovery of possession of the land has taken place, the court may stay proceedings in the action upon the application of a person having a subsequent lien, charge or encumbrance, made under subsection 1 within ten days after service of notice of the judgment has been made upon him.

Subsequent default

(3) Where proceedings have been stayed under subclause ii of clause *b* of subsection 1 or under subsection 2 and default again occurs under the mortgage, the court upon application may remove the stay. 1958, c. 61, s. 1.

Application

(4) This section applies to mortgages existing on or made after the 2nd day of April, 1953. 1953, c. 66, s. 1 (2), *amended*.

## PART II

### STATUTORY POWERS

Powers incident to mortgages after default for certain time:

**21.** Where any principal money is secured by mortgage of land, the mortgagee, at any time after the expiration of four months from the time when the principal money has become



payable, according to the terms of the mortgage, or after any interest on the principal money has been in arrear for six months, or after any omission to pay any premium on any insurance which, by the terms of the mortgage, ought to be paid by the mortgagor, has the following powers to the like extent as if they had been in terms conferred by the mortgage but not further, namely,

- (a) a power to sell, or concur with any other person in selling, the whole or any part of the mortgaged property by public auction or private contract subject to any reasonable conditions he may think fit to make, and to buy in at an auction and to rescind or vary contracts for sale, and to resell the land, from time to time, in like manner without being answerable for any loss occasioned thereby; <sup>power of sale</sup>
- (b) a power to insure and keep insured against loss or damage by fire any building or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance are a charge on the mortgaged property, in addition to the mortgage money and with the same priority and with interest at the same rate as the mortgage money. R.S.O. 1950, c. 239, s. 20. <sup>power to insure</sup>

**22.** A receipt for purchase money given by the person exercising the power of sale conferred by section 21 is a sufficient discharge to the purchaser, who is not bound to see to the application of the purchase money. R.S.O. 1950, c. 239, s. 21. <sup>Receipts for purchase money sufficient discharges</sup>

**23.—(1)** No sale under the power conferred by section 21 shall be made until after two months notice in writing (Form 1) has been given to every subsequent encumbrancer, and to the mortgagor, either personally or at his usual or last place of residence in Ontario. <sup>Notice before sale</sup>

(2) The notice may be given at any time after any default in making a payment provided for by the mortgage. <sup>When to be given</sup>

(3) In case of the death of the person entitled subject to the mortgage, and of his interest passing to an infant, the notice shall be given to his personal representative as well as to the infant. <sup>Case of an infant</sup>

(4) The notice to the infant shall be served upon his guardian, and if he has no guardian upon the Official Guardian, and in every case upon the infant himself if over the age of twelve years. R.S.O. 1950, c. 239, s. 22. <sup>Service upon infant</sup>

Title of  
purchaser

**24.** Where a conveyance has been made in professed exercise of the power of sale conferred by section 21, the title of the purchaser is not liable to be impeached on the ground that no case had arisen to authorize the exercise of such power, or that such power had been improperly or irregularly exercised, or that such notice has not been given; but any person damnified by an unauthorized, improper or irregular exercise of the power has his remedy against the person exercising the power. R.S.O. 1950, c. 239, s. 23.

Application  
of purchase  
money

**25.** The money arising from the sale shall be applied by the person receiving the same as follows:

Firstly, in payment of all the expenses incident to the sale or incurred in any attempted sale;

Secondly, in discharge of all interest and costs then due in respect of the mortgage under which the sale was made;

Thirdly, in discharge of all the principal money then due in respect of the mortgage; and

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c. 113

Fourthly, subject to the provisions of section 9 of *The Dower Act*, in payment of the amounts due to the subsequent encumbrancers according to their priorities,


and the residue shall be paid to the mortgagor. R.S.O. 1950, c. 239, s. 24.

Conveyance  
to the  
purchaser

**26.** The person exercising the power of sale has power to convey or assign to and vest in the purchaser the property sold for all the estate and interest therein of the mortgagor and of which he had power to dispose. R.S.O. 1950, c. 239, s. 25.

Right to title  
deeds and  
conveyance  
of legal  
estate

**27.** At any time after the power of sale has become exercisable, the person entitled to exercise the same is entitled to demand and recover from the mortgagor all deeds and documents in his possession or power relating to the mortgaged property, or to the title thereto, which he would have been entitled to demand and recover if the property had been conveyed, appointed, surrendered or assigned to and was then vested in him for all the estate and interest of the mortgagor and of which he had power to dispose, and where the legal estate is outstanding in a trustee the mortgagee, or any purchaser from him, is entitled to call for a conveyance of the legal estate to the same extent as the mortgagor could have called for such a conveyance if the mortgage had not been made. R.S.O. 1950, c. 239, s. 26.



**28.** So much of this Part as confers a power to sell does not apply in the case of a mortgage that contains a power of sale except as provided in section 29, and so much as confers a power to insure does not apply in the case of a mortgage that contains a power to insure; nor do any of the provisions of this Part apply to a mortgage that contains a declaration that this Part does not apply thereto. R.S.O. 1950, c. 239, s. 27.

**29.—(1)** Where a mortgage made in pursuance of *The Short Forms of Mortgages Act* contains a power of sale in the form of words numbered 14 in Column One of Schedule B to that Act, the mortgagee may, in exercising the power, in lieu of taking the proceedings provided for by such form in Column Two of that Schedule, take proceedings under and have the benefit of the provisions of this Part, except that such power is not exercisable until after at least four months default and at least two months notice, or such longer periods as may by the power contained in such mortgage be fixed therefor, and this Part applies to a sale made under such power.

**(2)** Where a mortgage purporting to be made in pursuance of *The Short Forms of Mortgages Act* contains a power of sale that provides for a sale without notice, the mortgagee may take proceedings to sell under and have the benefit of the provisions of this Part as fully and effectually as if the mortgage had not contained a power of sale. R.S.O. 1950, c. 239, s. 28.

### PART III

#### GENERAL PROVISIONS AS TO POWER OF SALE

**30.** A notice of exercising a power of sale shall state the amounts claimed to be due for principal, interest and costs respectively. R.S.O. 1950, c. 239, s. 29.

**31.—(1)** Where, pursuant to any condition or proviso contained in a mortgage, there has been made or given a demand or notice either requiring payment of the money secured by the mortgage, or any part thereof, or declaring an intention to proceed under and exercise the power of sale therein contained, no further proceeding and no action either to enforce the mortgage, or with respect to any clause, covenant or provision therein contained, or to the mortgaged property or any part thereof, shall, until after the lapse of the time at or after which, according to such demand or notice, payment of the money is to be made or the power of sale is to be exercised or proceeded under, be commenced or taken until an order permitting the same has been obtained from a



judge of the county or district court of the county or district in which the mortgaged property or any part thereof is situate, or from a judge of the Supreme Court.

Proof on which order may be granted

(2) The order may be obtained *ex parte* or upon such notice as the judge may direct upon such proof as satisfies the judge that it is reasonable and equitable that the proposed action or proceeding should be permitted.

Exception

(3) This section does not apply to proceedings to stay waste or other injury to the mortgaged property. R.S.O. 1950, c. 239, s. 30.

Payment made in terms of notice

**32.**—(1) Where such demand or notice requires payment of all money secured by or under a mortgage, the person making such demand or giving such notice is bound to accept and receive payment of the same if made as required by the terms of such demand or notice.

Payment or tender of costs

(2) If there is a dispute as to the costs payable by the person by or on whose behalf such payment is either made or tendered, such costs shall, on three clear days notice to such person by the person claiming the same, be taxed and ascertained by the clerk of the county or district court, or by the local master of the county or district in which the mortgaged property or any part thereof is situate.

Compliance with demand

(3) Where the time limited by the demand or notice requiring payment expires before the taxation of the costs has been completed, the amount due apart from the costs claimed may be paid, and payment of the amount allowed for costs within ten days after the issue of a certificate of taxation shall be deemed a compliance with the demand or notice.

Costs, taxation

(4) A mortgagee's costs of and incidental to the exercise of a power of sale, whether under this Part or otherwise, may, without an order, be taxed by one of the taxing officers of the Supreme Court at Toronto or by a local master having jurisdiction in the county or district in which the mortgaged property or any part of it is situate at the instance of any person interested.

Discretion as to costs

(5) The costs of the taxation shall be in the discretion of the taxing officer. R.S.O. 1950, c. 239, s. 31.

## FORM 1

(Section 23)

## NOTICE OF SALE UNDER MORTGAGE

I hereby require you on or before the..... day of.....19.....,  
(a day not less than two calendar months from the service of the notice, and  
not less than six months after the default), to pay off the principal money  
and interest secured by a certain mortgage dated the.....day of  
.....19....., and expressed to be made between (*here state parties and*  
*describe mortgaged property*), which mortgage was registered on the.....  
day of.....19....., (*and if the mortgage has been assigned add: and has*  
*since become the property of the undersigned*). And I hereby give you  
notice that the amounts due on the mortgage for principal, interest and  
costs respectively, are as follows: (*set the same forth*).

And unless the principal money, interest and costs are paid on or before  
the.....day of.....19....., I shall sell the property com-  
prised in the mortgage under the authority of *The Mortgages Act*.

Dated the.....day of.....19.....

R.S.O. 1950, c. 239, Form I.

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